1835

SUPREME COURT OF THE UNITED STATES.

No. ~~283.~~ 196.

PATRICK McLAUGHLIN, Pl'ff in Error,

vs.

JAMES SWAN and JOHN S. GITTINGS, Garnishees of the Chesapeake and Ohio Canal Company.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GIDEON, Printer.

1837

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-six: Present, the Honorable William F. Giles, Judge of Maryland District, Wm. Meade Addison, Esquire, Attorney, John W. Watkins, Esquire, Marshal, Thomas Spicer, Clerk:—

Among other were the following proceedings, to wit:—

PATRICK MCLAUGHLIN
vs.
JAMES SWAN and JOHN S. GITTINGS, Garnishees of the Chesapeake and Ohio Canal Company.

Be it remembered that heretofore, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-six, the said Patrick McLaughlin, by Henry Winter Davis and Thomas S. Alexander, his attorneys, filed in the Circuit Court here a mandate from the Supreme Court of the United States, in the words and of the tenor following, to wit:—

Mandate.

United States of America, *ss.*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the District of Maryland, greeting:— [SEAL.]

Whereas, lately in the Circuit Court of the United States for the District of Maryland, before you, or some of you, in a cause between Patrick McLaughlin, Plaintiff, and James Swan and John S. Gittings, garnishees of the Chesapeake and Ohio Canal Company, defendants, the judgment of the said Circuit Court was in the following words, to wit:—

"Therefore it is considered by the court here, that the said Patrick McLaughlin take nothing by his said writ of attachment against the said James Swan and John Gittings; and that the said James Swan and John S. Gittings, go thereof, without day, &c.

"It is also considered by the court here that the said James Swan and John S. Gittings recover against the said Patrick McLaughlin the sum of for their costs and charges by them about their defence in this behalf laid out and expended, and that they have thereof their execution against the said Patrick McLaughlin," as by the inspection of the transcript of the record of the said Circuit

Court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-five, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: on consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be and the same is hereby reversed with costs, and that the said plaintiff, Patrick McLaughlin, recover against the said defendants, James Swan and John S. Gittings, garnishees as aforesaid, ninety-four dollars and thirty-one cents, for his costs herein expended, and have execution therefor.

And it is further ordered, that this cause be and the same is hereby remanded to the said Circuit Court, with directions to award a venire facias de novo.

Feb'y 7.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice and the laws of the United States, ought to be had, the said writ of error notwithstanding. Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-five.

Costs of plaintiff.

Clerk,	$74 31
Attorney,	20 00
	$94 31

Taxed by WM. THOS. CARROLL,
Clerk of the Supreme Court of the U. States.

And now here at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-six, comes into the Circuit Court here the said Patrick McLaughlin, by his attorneys aforesaid, and the said James Swan and John S. Gittings, Garnishees of the Chesapeake and Ohio Canal Company, by James M. Campbell and Cornelius McLean, their attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereupon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-six, come again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Plea and Issue.

And the said James Swan and John S. Gittings, garnishees as aforesaid, by their attorneys as aforesaid, defend the force and injury when, and so forth, and say, that the said Patrick McLaughlin, condemnation in the hands of them, the said James Swan and John S. Gittings, of the effects of the said Chesapeake and Ohio Canal Company ought not to have, because they say, that at the time of laying the said attachment in their hands, they had not, nor at any time since have had, nor now have, any of the goods, chattels, and credits of the said Chesapeake and Ohio Canal Company in their hands; and of this they put themselves upon the country: And the said Patrick McLaughlin in like manner, &c.

Whereupon for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the panel of petit jurors returned to the court here by the marshal of the Maryland District aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:—

Jury.

Charles Howard, John W. Davis, George Cables, James W. Steele, James McHenry, Rich'd C. Hardesty, Douglass Clopper, Elijah Carman, Washington Munroe, John Myers, Thomas W. Hellen, J. Carroll Walsh, who being empanelled and sworn to say the truth upon the premises, upon their oath do say:—

Verdict.

That the said James Swan and John S. Gittings at the time of laying said attachment in their hands, that is to say, on the fourth day of June, 1841, at the District aforesaid, had not, nor have they since had, nor have they now, in their hands, any of the goods, chattels, and credits of the said Chesapeake and Ohio Canal Company, as the said James Swan and John S. Gittings by their said plea have alleged.

Judgment.

Therefore it is considered by the court here that the said Patrick McLaughlin take nothing by his said writ of attachment against the said James Swan and John S. Gittings; and that they, the said James Swan and John S. Gittings, go thereof without day, &c. It is also considered by the court here that the said James Swan and John S. Gittings recover against the said Patrick McLaughlin the sum of for their costs and charges by them about their defence in this behalf laid out and expended, and that they have thereof their execution against the said Patrick McLaughlin.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here the said Patrick McLaughlin, by his attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:—

Plaintiff's Exceptions.

PATRICK McLAUGHLIN
vs.
JAMES SWAN and JOHN S. GITTINGS,
Garnishees of the Chesapeake and
Ohio Canal Company.

At the trial of this cause the plaintiff, to support the issue on his part joined, read in evidence to the jury the following deeds from the Chesapeake and Ohio Canal Company to the defendants, James Swann and John S. Gittings, and William Gunton, stating at the time that he claimed to charge the defendants with moneys received by them under the second of the said deeds, and that he read the first only because it was referred to in the second, and because it illustrated or explained the transaction.

Deed No. 1.

Whereas, the Chesapeake and Ohio Canal Company did, by resolution of the President and Directors thereof, dated the twenty-fifth day of September, eighteen hundred and thirty-nine, resolve, order, and determine to issue various promissory notes or scrip in payment of debts due or to become due by said company (and made payable to the person or persons entitled to receive the same or to bearer). And whereas, the Bank of Washington, in the city of Washington, at the instance of the said Chesapeake and Ohio Canal Company, did endorse said bills of exchange drawn by the President of said Chesapeake and Ohio Canal Company to and for the use of the same, upon George Peabody, Esquire, agent of said company in London, of the payment of which said bills of exchange no notice has as yet been received by the said company. And whereas, the said Chesapeake and Ohio Canal Company being desirous of securing the payment of the said promissory notes or scrip, as well as the said promissory notes or scrip already issued or to be issued, in virtue of the resolution aforesaid, as also the payment of the promissory notes or scrip of the said Chesapeake and Ohio Canal Company which has been issued under former resolutions, and in pursuance of the same, and to indemnify and save harmless the Bank of Washington from their liability as aforesaid, did, by a resolution of the President and Directors of said Chesapeake and Ohio Canal Company, dated the twenty-second day of January, in the year one thousand eight hundred and forty, direct the President of said company to assign and transfer certain bonds of the State of Maryland, and also a certain claim upon the said

State of Maryland for other bonds, the property of the said Canal Company hereinafter more fully described, to James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, any two of whom shall have power to act in trust for the purposes hereinafter expressed, and did further order and direct this deed to be executed by the President of said Canal Company in their name, and by their authority, more fully to carry into effect the objects and intents of said resolution.

Now, therefore, this indenture, made this twenty-second day of January, in the year one thousand eight hundred and forty, between the Chesapeake and Ohio Canal Company, by Francis Thomas, President thereof, acting in the name and behalf of said company, and in consideration of the premises, and in due and faithful performance of the intent of said company, as ordered and determined as aforesaid, and the power and authority vested in the said President and Directors as aforesaid, and in the said Francis Thomas, President of the Chesapeake and Ohio Canal Company, of the one part, and James Swan, John S. Gittings and William Gunton, of the other part, witnesseth, that for and in consideration of the premises aforesaid, and of the sum of five dollars, current money, to him, the said Francis Thomas, of the first part, for the said Chesapeake and Ohio Canal Company, by the said James Swan, John S. Gittings and William Gunton, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Francis Thomas, President of the Chesapeake and Ohio Canal Company, acting in the name and in the behalf of the said company, and in the due and faithful performance and execution of the intent of the said company, as expressed in the resolution aforesaid, and of the power and authority vested in him as aforesaid, have given, granted, transferred, bargained and sold, and by these presents doth give, grant, transfer, bargain and sell unto James Swan, John S. Gittings and William Gunton, and to the survivor of them, and to the heirs of such survivor, in trust for the purposes hereinafter particularly set forth and expressed, all the interest, right, property, claim and estate, which the said Chesapeake and Ohio Canal Company hath in and to forty bonds of the State of Maryland, bearing five per centum interest, each bond for two hundred and fifty pounds sterling, and numbered as follows: numbers 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921. All of which said bonds, numbered and described as aforesaid, and now in the custody of the Bank of Washington. Also, all the right, title and claim, and interest of the said Canal Company in and to two hundred and eight bonds of the said State of Maryland, bearing five per centum interest, each bond for two hundred and fifty pounds sterling, numbered from 2642 to number 2849 in regular succession, both numbers being

which said bonds are now in the custody of the Bank of America, in the city of New York, and all of which said bonds have been issued in favor of said Canal Company, under the act of the General Assembly of the State of Maryland, passed at the December session, in the year 1838, chapter 386. Also, all the right, title, interest and claim which the said Chesapeake and Ohio Canal Company has in and to a further issue of bonds to the said Canal Company, under the provisions of the third section of the act of the General Assembly of Maryland, passed at its December session, 1838, entitled "An act to provide ways and means to meet the subscriptions on the part of the State to works of internal improvement," and to the bonds which may be issued in favor of said Canal Company, in virtue of the said provisions of the said section of said act: to have and to hold the said bonds of the State of Maryland, so as aforesaid described, as with those already issued, as those that may issue as aforesaid to them: and the said James Swan, John S. Gittings and William Gunton, and to the survivor of them, and to the heirs of such survivor, in trust, nevertheless, for the uses, intents and purposes herein particularly described and declared, and to and for no other use, intent or purpose whatsoever; that is to say, for the faithful payment of the promissory notes or scrip of the Chesapeake and Ohio Canal Company, which has been, or may be issued under the resolutions aforesaid; and also for the payment of any loss or damage which the Bank of Washington may sustain in virtue of their endorsement of said bills of exchange, described as aforesaid, with power to the said trustees, or the survivor of them, or of the heirs of such survivor, to sell the said bonds of the State of Maryland, so as aforesaid described, at any time after the execution of this instrument, if to them it should seem expedient for the interest of all parties concerned, and to apply the proceeds of said bonds immediately to the payment of said promissory notes or scrip, with the interest due thereon; and also to the payment of any loss or damage which the Bank of Washington may sustain in virtue of their endorsement of the said bills of exchange, should any loss or damage be sustained in consequence of such endorsements, and the surplus money, if any, after the performance of the trust aforesaid, to hold to and for the use and benefit of the said Chesapeake and Ohio Canal Company, and subject to their order.

In witness whereof, Francis Thomas, President of the Chesapeake and Ohio Canal Company, hath, on the 22d day of January, in the year 1840, hereunto subscribed his name, and affixed the corporate seal of the said company, in due execution of the power and authority vested in him as aforesaid.

Deed No. 2.

Whereas the Chesapeake and Ohio Canal Company did, by a resolution of the president and directors thereof, on the 25 day of September, in the year eighteen hundred and thirty-nine, resolve,

order, and determine, to issue various promissory notes or scrip in payment of debts due or to become due by said company, and made payable to bearer, which notes have been issued to the amount of three hundred thousand dollars, payable six months after date, with interest thereon. And whereas the said Chesapeake and Ohio Canal Company are desirous of securing the payment of the said promissory notes or scrip, and also the payment of any other promissory notes or scrip, which have been issued under former resolutions, a schedule of which notes now in circulation is hereto annexed, did, by a resolution of the president and directors of the said Chesapeake and Ohio Canal Company, on the twenty-second day of January, in the year one thousand eight hundred and forty, direct the president of the said canal company to assign and transfer certain bonds of the State of Maryland, and also a certain claim upon the State of Maryland for other bonds, the property of the said canal company, hereinafter more fully described, to James Swan and John S. Gittings, of the city of Baltimore, and William Gunton, of the city of Washington, any two of whom shall have authority to act in trust for the purposes hereinafter expressed; and did further order and direct the president of the said canal company to execute a deed in the name and by the authority of the said canal company, to carry into effect the object and intent of the said resolution. And whereas the said canal company did, by their deed dated the twenty-second day of January, in the year eighteen hundred and forty, convey to the said trustees the said bonds and claim, for the purpose of paying the said promissory notes or scrip, and also to save harmless the Bank of Washington from any loss or damage which said bank might sustain in consequence of having endorsed certain bills of exchange drawn for the use of the said canal company, which said bills of exchange have been paid by said canal company since the date of the said deed to the said trustees, or the advice of the said payment has been received since the date thereof. And whereas the said trustees have signified to the said company their unwillingness to except the said trust deed, or to act as trustees under the same, unless the said canal company shall designate and prescribe the time and manner of paying off and satisfying the said promissory notes or scrip more specifically than is mentioned in said deeds; and the said canal company being desirous of gratifying the said trustees, and of lessening their responsibility as trustees, have determined to issue this instrument of writing. Now, therefore, this indenture, made between the Chesapeake and Ohio Canal Company by Francis Thomas, President thereof, acting in the name and behalf of said company, in consideration of the premises, and in due and faithful performance of the intent of the said company, ordered and determined as aforesaid, and of the power and authority vested in the said president and directors as aforesaid, and in the said Francis Thomas, President of the said Chesapeake and Ohio Canal Company, of the one part, and

James Swan, and John S. Gittings, and William Gunton, of the other part: Witnesseth, that for and in consideration of the premises aforesaid, and of the sum of five dollars current money, to him, the said Francis Thomas, of the first part, in hand paid for the Cheaspeake and Ohio Canal Company by the said James Swan, John S. Gittings, and William Gunton, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Francis Thomas, President of the Chesapeake and Ohio Canal Company, acting in the name and in the behalf of the said company, and in the due and faithful performance and execution of the intent of the said company as expressed in their resolution aforesaid, and of the power and authority vested in him as aforesaid, hath given, granted, transferred, bargained, and sold, and by these presents doth give, grant, transfer, bargain, and sell, unto James Swan, John S. Gittings, and William Gunton, and to the survivor of them, and to the heirs of each survivor, in trust for the purposes hereinafter particularly set forth and expressed, all the interest, right, property, claim, and estate which the said Chesapeake and Ohio Canal Company hath in and to two hundred and forty-eight bonds of the State of Maryland for two hundred and fifty pounds sterling money, each bearing five per centum interest per annum, issued in favor of the Chesapeake and Ohio Canal Company under the act of the General Assembly of Maryland, passed at its December Session, in the year eighteen hundred and thirty eight, Chapter 386, which bonds are numbered as follows, viz:—

Number 2482 to 2521, inclusive of both,	40	bonds.
Number 2582 to 2699, inclusive of both,	118	"
Number 2700 to 2781, inclusive of both,	82	"
Number 2914 to 2921, inclusive of both,	8	"
making	248	bonds.

All of which are now in possession of the before mentioned trustees: Also all the right, title, interest and claim which the said Chesapeake and Ohio Canal Company has in and to a further issue of the bonds to the said Canal Company, under the provisions of the aforesaid act of the General Assembly of Maryland, and the bonds which might be issued in favor of said Canal Company in virtue of said act: To have and to hold the said bonds so as aforesaid described, as well those that may be issued as aforesaid, to them the said James Swan, John S. Gittings, and William Gunton, and to the survivor of them, and to the heirs of such survivor; in trust, nevertheless, for the uses, intents, and purposes herein particularly described and declared, and to and for no other use, intent, on purpose whatsoever; that is to say, for the faithful payment of the promissory notes or scrip of the Chesapeake and Ohio Canal Company, which have been issued under the reso

lution aforesaid (and are embraced in the schedule hereto annexed), in full, as they may be presented from time to time to the said Trustees at the Chesapeake Bank in the city of Baltimore, within six months from the date of this indenture, so far as the funds in the hands of the said trustees at the time of presentation may be sufficient for the payment thereof; and if more is presented at the same time by the same individual than the amount of funds in hand, the first application of any other funds to be the payment of the balance that may remain due after paying the said individual the amount of funds in hand, with power to the said trustees, or the survivor of them, to sell the said bonds of the State of Maryland, so as aforesaid described, after the execution of this instrument, if to them it shall seem expedient, for the interest of all parties concerned; and to apply the proceeds of said bonds immediately to the payment of said promissory notes or scrip, with the interest due thereon, said payment of said notes or scrip to be made aforesaid, it being the intention of the trust hereby created, that the payments made on claims presented shall be in full, so far as the funds in hand will enable payment to be made, and that the said trustees shall not be bound or authorized to retain in anticipation of any further claim or for the purpose of ascertaing a pro rata dividend, but shall pay claims in the order as presented, and to their full amount; and should claims be presented when the trustees are not in funds to pay, the said trustees shall not be bound to take notice thereof, unless the scrip or notes on which such claims arise be left with the trustees, or any one of them, and that interest shall be allowed on all such claims only to the day of their being handed to and left with the said trustees. And it is agreed that the said trustees shall, at the end of six months from the date of his instrument, pay over to the Chesapeake and Ohio Canal Company all the money they may then have on hand, and deliver to the said company all the bonds of the State of Maryland which shall then be unsold, whether all the aforesaid promissory notes or scrip shall have been paid, or whether a part thereof shall then still be in circulation.

In witness whereof, Francis Thomas, President of the Chesapeake and Ohio Canal Company, hath, this fifteenth day of April, in the year eighteen hundred and forty, hereunto subscribed his name, and caused the corporate seal of the said company to be hereto affixed, in due execution of the power and authority vested in him, as aforesaid.

[SEAL.] (Signed) FRANCIS THOMAS, President.

(Signed) Attest: JOHN P. INGLE,
Cl'k C. and O. C. Co.

Schedule of notes issued by the Chesapeake and Ohio Canal Company, so far as they are in circulation, on this fifteenth day of April, 1840, being the same referred to in the foregoing deed of trust, viz:—

Notes under the denomination of $5 issued in the year 1837, payable on demand		11,688 50
In the year 1837 and 1838, payable on demand		5,950
Notes of the denomination of 5, 10, and 20 dollars issued in the year 1837, payable six months after their date, with interest		770
Notes of the denomination of 5, 10, and 20 dollars, issued under the order of the 25 of September, 1839, payable six months after date, with interest, viz: On the 9 November, 1839	$168,000	
On the 9 December, 1839	77,360	
On the 10 of January and 10 February, 1840	59,640	
		300,000
		$318,408 50

(Signed) JOHN P. INGLE,
C'k C. & O. C. Co.

(Signed) FRANCIS THOMAS,
President.

And also proved that the said defendants were the acting trustees, the said Gunton residing in the District of Columbia, and not having accepted either of said deeds, and taking no part in the execution of the aforesaid trust; and the other Trustees having with the company's assent proceeded in the trust as if solely named therein; and that the bonds enumerated in said second deed and thereby assigned had been duly delivered to the defendants as Trustees, and that the said defendants had realized out the bonds so assigned to them the sum of $361,075 88, and that in redeeming scrip or promissory notes described or enumerated in the schedule annexed to the second of said deeds, they have expended the sum of $305,225 88, and as evidence of the times of receipt and expenditure as aforesaid read in evidence to the jury the following statements, which were admitted to have been prepared by the direction of the defendant Gittings, on behalf of said Trustees.

15-69

Statement No. 1.

F. Thomas, President of the Chesapeake and Ohio Canal Co., in acc. with the Chesapeake Bank.

1840.		Dr.			
March 16.	To check	4	48,516	22
19.	do		5,000	
24.	do		28	25
April 2.	do	2	2,811	60
6.	do		2,355	
11.	do		15,000	
18.	do		1,500	
20.	do		2,000	
24.	do	2	16,000	
28.	do		1,500	
May 14.	do		745	58
29.	Bill of expenses		7	
June 3.	To check		100	
12.	do		4,122	
17.	do		2,000	
19.	do		500	
20.	do		100	
20.	do		84	
22.	do		120	
23.	do		333	33
July 3.	do		1,500	
7.	do	3	2,950	64
8.	do		650	
9.	do		2,950	
10.	do		771	15
11.	do	3	597	69
13.	do		1,167	90
16.	do	2	3,250	
24.	do		2,062	50
29.	do		20	
August 1.	do		175	25
4.	do		177	52
5.	do		507	
	Amount forward		$119,602	33
	To amount forward		$119,602	33
Aug'st 12.	To check		10,000	
12.	do	2	445	50
13.	do	3	4,718	70
14.	do		208	71
15.	do	10	29,930	
17.	do	3	1,175	
20.	do		2,032	20

Aug'st 21.	To check		391 53
24.	do		175
25.	do		5,476 04
26.	do		54 23
Sept. 4.	do		2,377 94
12.	Swan & Gittings, Trustees		3,000
	Barnard, Treasurer		160 47
	Balance carried to the credit of acc't with the Chesapeake and Ohio Canal Company		30,295 34
			$210,042 99

Chesapeake Bank, Baltimore, Nov. 17, 1857.
E. & O. E.

1840. CR.

March 17.	By cash		5,022 22
24.	do		19,955 54
31.	do		10,000
Sept. 3.	do		4,965 44
3.	do		9,944
20.	do		35,000
24.	do		10,000
June 15.	do		10,000
15.	do		4,933 41
26.	do		9,799 98
July 2.	do		9,750 56
Aug'st 15.	do		3,000
29.	do		4,777 77
Sept. 12.	do	Bernard Trease	29,894 07
			$210,042 99

J. Swan and S. Gittings, Trustees in account with the Chesapeake Bank.

1840. DR.

May 9.	To notes redeemed		$27,547 35
11.	do		3,980 95
12.	do		2,909 75
13.	do		3,218 75
14.	do		906 40
16.	do		14,383 95
18.	do		901 25
21.	do		4,799 80
25.	do		983 65
26.	do		1,400 80
27.	do		525 30
29.	do		2,435 95

June	1.	To notes redeemed	41,781	95
	2.	do	360	50
	4.	do	1,653	16
	5.	do	16,484	91
	6.	do	236	90
	9.	do	13,626	90
	10.	do	10,840	75
	11.	do	2,446	25
	12.	do	1,019	70
	13.	Bill for advertising	9	
	13.	Notes redeemed	401	70
	15.	do	540	75
	16.	do	17,386	40
	18.	do	22,696	05
	18.	do	679	80
	19.	do	236	90
	22.	do	494	40
	24.	do	664	35
	26.	do	648	90
	29.	do	957	90
July	3.	do	829	15
	6.	do	1,066	05
	7.	To notes redeemed	942	46
	7.	Expenses		50
	8.	Notes redeemed	3,548	35
	9.	do	9,790	15
	10.	do	10,696	55
	11.	do	6,938	05
	13.	do	1,169	65
	14.	do	7,457	20
	15.	do	297	
	17.	do	18,344	30
	18.	do	700	40
	21.	do	478	95
	27.	do	1,714	95
	24.	do	339	40
	27.	do	118	85
	28.	do	854	90
	29.	F. Fillebrown	3,000	
	31.	Notes redeemed	566	50
Aug.	2.	do	1,241	15
	6.	do	2,595	60
	8.	do	386	25
	10.	do	3,198	15
	11.	do	268	20
	13.	do	442	90
	15.	do	4,134	95
	18.	do	515	

Aug.	19.	Notes redeemed	705 55
	20.	do	913 35
	21.	do	587 10
	24.	do	679 80
	26.	do	349 30
	29.	do	468 65
Sept.	3.	do	860 05
	5.	do	1,251 45
	8.	do	472 95
	10.	do	571 35
	15.	do	3,645 45
	16.	do	751 60
	21.	do	437 60
	23.	do	442 90
	25.	do	448 05
	29.	do	875 50
Oct.	3.	Check	1,356 25
	8.	do	485 10
	13.	do	484 10
	17.	do	6,285 25
Dec.	3.	do	1,127 85
	11.	do	45
	18.	do	924 75
1841.			
Jan'y	5.	Interest	7,342 16
	8.	Notes redeemed	973 35
	29.	Chesapeake and Ohio Canal Co.	16,958 32
Feb'y	8.	Notes redeemed	659 20
March	3.	do	432 90
	10.	Check	100
April	3.	Interest	914 22
	5.	do	228 81
		Notes redeemed in March	642 95
	16.	J. Swan's expenses to New York	33 30
		Notes redeemed	236 90
	25.	C. & O. C. Co. acceptances charged to J. S. Gittings, Pres., April 12	27,976 53
		Comm's allowed Trustees	6,893 30
			$369,384 40

Chesapeake Bank, Baltimore, Nov. 17, 1857. E. & O. E.

Cr.

1840.			
May	1.	By cash	$11,466 66
	2.	do	3,692 50
	8.	do	7,644 44
	26.	do	15,315 40
	29.	do	7,644 44

June	17.	By Cash	11,466 66
	29.	do	15,466 66
July	9.	do	20,639 32
	11.	do	18,438 68
Sept.	12.	do F. Thomas, Pres.	3,000
Oct.	5.	do	23,743 76
Dec.	22.	do	24,000
	23.	do	13,685 62
	26.	do	9,000
	28.	do	9,857 56
	31.	do	16,958 32
1841.			
Feb'y	27.	do	15,000
June	25.	J. S. Gittings, Pres.	137,055 56
		Balance to credit Chesapeake and Ohio Canal Co.'s acct.	4,308 82
			$368,384 40

The Chesapeake & Ohio Canal Co., in acc't with the Chesapeake Bank.

1840.		DR.	
Sept.	12.	To check	$188 05
	14.	do	1,652 50
	15.	do	145,814 37
	16.	do	381 39
	17.	do	176 75
	18.	do	176 17
	19.	do	1,521 74
	"	do	1,003 50
	21.	do	98
	23.	do	500
	24.	do	80
	25.	do	450 23
	26.	do	121 84
	28.	do	4,000
	"	William Matthews, comm's	7,000
Oct.	14.	Checks 2	1,337 34
	17.	do 3	2,217 40
	20.	do	350
	24.	do	350
Nov.	6.	do	19,384 23
	9.	do	500
	23.	do	409 66
	24.	do	521 27
	25.	do	1,244 71
	26.	do	774 69
	27.	do	113 14

Nov.	28.	To check	1,223	73
	30.	do	119	57
Dec'r	1.	do	1,500	
	2.	do	89	64
	5.	do	36	24
	7.	do	110	56
	12.	do	350	
	14.	do	653	17
	18.	do	204	89
	19.	do	1,365	36
	21.	do	584	37
	26.	do	2,597	73
1841.				
Jan'y	5.	do	310	
	6.	do	29	46
	11.	do	6	24
	27.	do	266	66
April	22.	Cash paid for trunk for Mr. Turner	2	50
May	18.	Notes redeemed 28th April	342	62
	22.	Cash p'd for tin cases, freight, &c.	6	06
June	9.	Cash bill for writing bond	25	
	25.	Balance from acc't Swan & Gittings, trustees	4,308	82
	30.	Cash p'd fee J. Glenn	500	
1842.				
Jan'y	22.	" J. M. Campbell	100	
1851.				
Nov.	14.	" T. S. Alexander and John Nelson, counsel for bank Potomac, under decree of Judge Brewer of the Chancery Court	7,297	99
			$390,547	59

1840.		Cr.		
Sept.	12.	By balance from acc't of F. Thomas, Pres.	30,295	34
	15.	Cash	145,010	08
Oct.	3.	do	1,165	35
Nov.	6.	do	194,370	68
Dec'r	2.	do	160	47
	10.	do Wm. Matthews, Com's	2,587	05
1841.				
Jan'y	19.	do Swan & Gittings, Trustees,	16,958	62
			$390,547	59

The defendants thereupon, to maintain the issue on their part joined, offered to read to the jury the following paper, which it also admitted was prepared under the direction of the defendant Git-

tings, the said paper purporting to be account of the receipts and disbursements of the said trustees in execution of said trust, and showing a balance of trust moneys at the time of preparing said statement of $7,297 99 and no more, and the said defendants offered at the same time to accompany said paper with other proofs of their expenditures.

Paper, J. S. G., No. 11.

Trust property of Chesapeake and Ohio Canal Co. in acc't with James Swan and John S. Gittings, Trustees.

DR.

To scrip redeemed,	$305,225 88
Commissions allowed Swan & Gittings,	6,893 30
Acceptances of Chesapeake and O. Canal Co.,	27,976 53
Interest on over-drafts from Jan'y to 27 Feb'y,	1,143 03
do do 1 Jan'y do	7,342 16
Fees to Glenn & Campbell,	600 00
Cash advanced in 1840,	4,375 63
Bill for advertising,	9 50
Paid Fillebrown for service,	45 00
Expenses, Swan & Gittings to New York,	133 30
Trunk and tin case for Mr. Turner,	8 56
Bill for writing sterling bonds,	25 00
Balance, see credit side below,	$361,075 88
By amount rec'd for sale of bonds,	$344,117 26
Interest rec'd on said bonds,	16,958 62
	$361,075 88
1842. By balance,	$7,297 99

But the plaintiff, admitting the correctness of said paper in so far as it professed to state the receipts of the said defendants as trustees, and also their expenditures in execution of said trust to amount of $, and consenting that said paper might be read in evidence in support of said charge and discharge, nevertheless objected to the admissibility in evidence of said paper so far as it claimed payment and allowance out of said trust fund of the sum of $27,976 53, in the purchase or payment of said acceptances of the said Chesapeake and Ohio Canal Company; and further, if such appropriation of said funds was in fact made, he denies that such appropriation was warranted by the said deed, and that the said trustees were entitled to allowance in account for moneys thus appropriated; but on the suggestion that his aforesaid objections could be more conveniently discussed after the defendants had produced all their proofs in relation to the purchase of said acceptances; it was agreed between

counsel for the parties that the said paper and all other papers which the defendants might propose to adduce in their defence should be offered subject to the foregoing objections, and subject to and with a reservation of rights to the plaintiff to make any and all other objections to the admissibility in evidence of said paper, and other proofs to be offered by the defendants as aforesaid after the evidence should have been closed on both sides.

Under said agreement the said paper was read to the jury. The defendants then further read in evidence the following acceptances:—

Copy of one acceptance.

Cumberland, Feb'y 15, 1840.

To the President and Directors of the Chesapeake and Ohio Canal Company.

Gentlemen: Six months after date pay to William P. Sterrett or order one hundred and twenty-five dollars on account of work done on Dam No. 8, and Guard Lock of the Chesapeake and Ohio Canal.

$125. M. C. SPRIGG, Com. C. & O. C. C.

CHARLES B. FISK, Chief Engineer.

Accepted under order of 24th Jan'y, 1840.

JOHN P. INGLE, Cl'k C. & O. C. Co.

25 Feb'y, 1840.

And proved the signature to said acceptance to be genuine, and that the same had been purchased or discounted by the Chesapeake Bank for full value in the usual course of business, and before *and before* the maturity thereof, and before the issual of the attachment in this case. And offered like evidence that said bank had become, before the issual of the attachment, the holders of other acceptances of the said company for full value to amount of all of said sum of $27,976 53; such proof being made by consent to avail as if each of said acceptances constituting said amount had been separately proved with the signatures thereon and exhibited to the jury.

The defendants then proved by James Loundes and William Woodville.

(The depositions of James Loundes and William Woodville are not among the papers.)

They then read in evidence the following bond from the defendants to the Chesapeake Bank, the due execution of said bond being admitted and proved by Loundes that the bond mentioned was accordingly delivered to the trustees, and the proceeds of purchase Oelrichs & Lurman received by the said trustees and put back by them into the bank.

(Bond not among the papers.)

Also the following resolutions of the Board of Directors of the Chesapeake and Ohio Canal Company, passed 6th March, 1841.

Resolutions, 6th March, 1841.

Resolved, That the trustees be allowed two per cent. on the amount of sales of all the bonds conveyed to them in full for all charges and claims for them or their agents in the execution of the trust.

Resolved, That the trustees be authorized to allow, in the settlement of their accounts with the Chesapeake Bank, interest at the rate of six per cent. per annum, and no more, for all sums advanced by that institution.

They then further proved by James Loundes, the state of the accounts.

(Hereinbefore inserted.)

And proved by said witness that the account of J. S. Gittings, President, was the account of the bank.

They then read in evidence the account of 21 April, 1841, and the plaintiff read in evidence the resolutions of the company of 4 June, 1841.

(Account hereinbefore inserted.)

(Resolution of the 4 June, 1841, not among the papers.)

The defendants also proved by said Loundes, that the sum of $16,938 62 was for coupons over due at the times of the sales which had been retained by the bank, on which the bank obtained the money.

And the garnishees further offered in evidence, the decree in the case of the bank of Potomac.

Decree.

THE PRESIDENT AND DIRECTORS OF THE BANK OF POTOMAC
vs.
JAMES SWAN and Others.

The complainants having dismissed their amended bill, and the defendants, the Chesapeake Bank, and John S. Gittings, having withdrawn their exceptions to the sufficiency of the averments contained in the original bill of complaint, and the cause being again submitted and considered: It is, thereupon, this third day of November, in the year eighteen hundred and fifty-one, by Nicholas Brewer, an Associate Judge of the Third Judicial District, sitting for the chancellor, and by the authority of this court, adjudged, ordered and decreed, that the said Chesapeake Bank forthwith pay, or bring into this court to be paid to the complainant, the sum of eleven thousand nine hundred and sixty dollars and fourteen cents, with interest thereon from the first day of the present month until paid, or bring it in to be paid as aforesaid, and also to deliver to the complainants, the bond of the State of Maryland for three hundred

and seventy-four pounds, sterling money, with the coupons thereto attached, which is mentioned in the proceedings.

And it is further adjudged, ordered, and decreed, that the Chesapeake and Ohio Canal Company forthwith pay, or bring into this court to be paid to the complainant, the sum of fourteen thousand seven hundred and eighty dollars and thirty cents, with interest thereon from the first day of the present month until paid, or brought in to be paid as aforesaid (being the balance of the sum due to the complainant as aforesaid, as stated in the proceedings), together with their costs of suit.

And it is further adjudged, ordered, and decreed, that this cause be, and the same is hereby dismissed as against the defendant, Patrick McLaughlin, and this decree is passed without prejudice to the rights of the said McLaughlin against any and every of the parties to this suit.

NICHOLAS BREWER,
Associate Judge of the 3d Judicial District.

And proved payment thereof by the Chesapeake Bank, so far as the said decree was against said bank.

And the defendants also proved, and it was admitted that the amount therein decreed to be paid by the Chesapeake Bank was the amount of the balance hereinbefore mentioned, to wit, $7297 99, with interest to date of said decree. And also proved and it was admitted, that the cause of action of the said suit in Chancery was a note of the Chesapeake and Ohio Canal Company, and an order of said company (which were both fully proved).

(Note and order not among the papers.)

And the said defendants insisted that said proofs altogether were admissible to show that the payment made of said balance was a good payment against the plaintiff, being made on an order of the Chesapeake and Ohio Canal Company antedating the attachment, and was also good to show that the bond mentioned in said decree, and the amount also therein mentioned to be paid by the Chesapeake Bank, was recognized by the Court of Chancery, and the Chesapeake and Ohio Canal Company, as being in the possession of the Chesapeake Bank, and not in that of the garnishees; and also that the Chesapeake and Ohio Canal Company was merely bound as to the allowance of the acceptances aforesaid, the same having been charged by the bank, and the balance being only if such charge was made and allowed.

But the plaintiff objected to the admissibility of all said proof, on the ground that the decree, by its terms, could not prejudice the plaintiff, and also because the order aforesaid of the said Chesapeake and Ohio Canal Company was not drawn upon or applicable to the fund created by the deed of April, 1840; and thereupon the plaintiff prayed the court to instruct the jury as follows:—

1839

Plaintiff's Prayers.

1. The plaintiff insists that the record of the aforesaid decree is not evidence in this cause againt him. And if admissible in evidence for any purpose, it is insisted that it is not admissible as evidence of a valid appropriation of any part of the fund sought to be recovered in this proceeding to the prejudice of the plaintiff. And he prays the court to instruct the jury that in taking the account of the funds recovered by the defendants, if it is found that any funds were so received by them, no allowance ought to be made to the said defendants for the sums or either of the sums which was by said decree adjudged to be paid to the plaintiff in that decree.

2. That the acceptances to as aforesaid shown to have been purchased by the Chesapeake Bank, and the proof in reference to such purchases, are not admissible in evidence in this proceeding. And if admissible for any purpose, will not entitle the defendants to allowances for the amount or any part of the amount of said acceptances in discount of, or offset against, the moneys which the jury may find were received by the defendants as trustees as aforesaid.

And the defendants prayed the court to instruct the jury as follows:—

Defendants' Prayers.

It being conceded by the plaintiff in this cause that one of the trustees named in the deeds offered in evidence by him never accepted the trust conferred by them, nor acted in any way in regard to the trust property, and that Messrs. Swan and Gittings, the remaining trustees (and the garnishees in this cause), proceeded in the trust with the assent of its creator in the same manner as if they only had been named in the trust deeds: Then the garnishees pray the court to instruct the jury—

1. That if they shall find from the evidence that the State bonds described in said deeds of trust were, before this attachment issued, pledged by the garnishees to the Chesapeake Bank for advances which it was to make and which it did make for the redemption of the scrip contemplated by said deeds, and that said bonds, before said attachment, were delivered and passed into the possession of said bank under said pledge, and that neither said bonds nor any of them, nor the proceeds of said bonds, nor any part thereof, came to the possession of or were under the control of said garnishees at any time after said attachment issued, then that the said plaintiff is not entitled to recover in this attachment to any extent.

2. But conceding argumenti gratia that the bank is to be looked upon merely as the agent of the garnishees: Then if the jury shall find from the evidence that the acceptances of the Chesapeake and Ohio Canal Company mentioned in and charged by the bank's account against the trust fund, were bought by the bank for value from their holders before the attachment in this case issued, and were still held unpaid at the time of the issual of the attachment,

and that the payment made to the Bank of Potomac was made by the Chesapeake Bank upon an assignment authorizing the same, executed by the Chesapeake and Ohio Canal Company before the issual of the attachment, and that notice of such assignment was given said garnishees before such issual; then that the plaintiff is not entitled to recover, it being admitted by him for the purposes of this case, that if the said acceptances and payment to the Bank of Potomac are allowed, there are not funds liable in the hands of the garnishees.

All which instructions the court refused to give, and instructed the jury as follows:—

Court's Instructions.

McLAUGHLIN
vs.
SWAN & GITTINGS, Gar. of the Chesapeake & Ohio Canal Company.

Circuit Court U. S. for Maryland District, November Term, 1856.

1. That the decree of the Court of Chancery of Maryland, offered in evidence in this case by the defendants, is not competent evidence against the plaintiff to show a valid appropriation of any part of the fund sought to be recovered by this attachment.

2. That if the jury shall find that the defendants accepted the trust created by the deed of the 15th of April, 1840, and received the bonds therein mentioned for the purposes of said trust, and subsequently sold the said bonds, and from the proceeds of sales and the coupon interest on the same received by them, paid and redeemed the scrip of the canal company mentioned in the said deed of trust, before the issuing of this attachment; and that, after thus fulfilling the objects of the trust, the jury shall find that there remained a surplus in their hands, or in the hands of any agent employed by them, greater than the amount of the claim of the plaintiff in this attachment, then the plaintiff is entitled to recover, although the jury may find that, in the execution of the trust, the trustees redeemed the said scrip through the Chesapeake Bank, with whom the bonds were deposited, and who received the proceeds of the same as the agent and depository of the defendants.

3. But if the jury shall find that the said defendants in the execution of their trust, not being able to make speedy and advantageous sales of the said bonds, obtained a loan from the Chesapeake Bank to enable them to redeem the said scrip, and as a security for the said loan, prior to the issuing of this attachment, pledged to the said bank, with the consent of the Canal Company, the bonds assigned to them by the deed of trust aforesaid; and that there was not in the hands of the said defendants at the time of the laying of this attachment, nor has there been since, any bonds or funds belonging to the Chesapeake and Ohio Canal Company, then the plaintiff cannot recover.

To which refusal on the part of the court to grant said instructions asked for by him, and also to the instructions so as aforesaid given by the court to the jury, the plaintiff excepted, and further prayed the court to instruct the jury:—

Additional prayer by the Plaintiff.

If the jury shall find from the evidence that, after the said bonds had been pledged by the trustees with the Chesapeake Bank (it, the jury, shall find any such pledge was made with the consent of the Chesapeake and Ohio Canal Company) a portion of said bonds were redelivered to the garnishees, trustees, for the purpose of sale, and were sold by the said trustees to Oelrichs and Lurman for the sum of $152,055 56, or thereabouts, and that the proceeds of sale came to the hands of the trustees, and that at the time of such receipt the said Chesapeake Bank was in advance for account of said trustees in execution of their trusts in a sum not exceeding $100,000; then the payment of the entire proceeds of sale of the said bonds to the said bank will not defeat the recovery of the plaintiff against them the defendants; under the preceding instructions the plaintiff would have been entitled to recover in case the said trustees had paid over to the said bank only so much of the said proceeds as would have sufficed to reimburse the bank the entire advances made by the bank to or for the trustees in execution of their trusts.

But the court rejects the said prayer: to which said rejection of said prayer the plaintiff also excepted, and prayed the court to sign and seal this his bill of exceptions from the several rejections of his prayers as aforesaid, and from the instructions actually given by the court to the jury aforesaid; which is accordingly done this 10th day of December, 1856.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, the tenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, the said Patrick McLaughlin produced to the said Circuit Court here, the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, as so aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:—

The United States of America, *ss.*

The President of the United States, to the Judges of the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, greeting:—

Because in the record and proceedings, as also in the rendition

of the judgment of a plea which is in the said court before you, or some of you, between Patrick McLaughlin, plaintiff, and James Swan and John S. Gittings, Garnishees of the Chesapeake and Ohio Canal Company, defendants—a manifest error hath happened, to the great damage of the said Patrick McLaughlin, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-six.

Issued 10 December, 1856.

[SEAL.] THO. SPICER, Cl'k Circ't Ct.

The United States of America

To James Swan and John S. Gittings, Garnishees of the Chesapeake and Ohio Canal Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the City of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, wherein Patrick McLaughlin is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Patrick McLaughlin, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, this 12th day of May, in the year of our Lord one thousand eight hundred and sixty.

WILLIAM F. GILES. [SEAL.]

I acknowledge of the above citation.

J. M. CAMPBELL, for J. S. Gittings.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of Error Bond.

Know all men by these presents, that we, Patrick McLaughlin, John O'Brien, and Daniel Coonan, are held and firmly bound unto James Swan and John S. Gittings, Garnishees of the Chesapeake and Ohio Canal Company, in the full and just sum of two hundred dollars, lawful money of the United States, to be paid to the said James Swan and John S. Gittings, Garnishees as aforesaid, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas, at a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-six, the said James Swan and John S. Gittings, Garnishees as aforesaid, by the judgment of the same court recovered against the said Patrick McLaughlin their costs and charges by them about their defence in that behalf laid out and expended:

And whereas the said Patrick McLaughlin hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said James Swan and John S. Gittings, citing and admonishing them be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf:

Now the condition of the above obligation is such, that if the said Patrick McLaughlin shall well and truly prosecute with effect his said writ of error, and pay to the said James Swan and John S. Gittings, Garnishees as aforesaid, their heirs, executors, administrators, or assigns, the costs and charges adjudged unto them by the said Circuit Court, and also all such damages, costs, and charges as may be awarded unto them by the said Supreme Court in case he, the said Patrick McLaughlin, shall fail to make good his said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

P. McLAUGHLIN, [SEAL.]
JOHN O'BRIEN, [SEAL.]
DAN'L COONAN. [SEAL.]

Signed, sealed, and delivered, in presence of
WM. O'BRIEN.

Bond approved 12 May, 1860.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the Circuit Court aforesaid, I hereunto subscribe my name and affix the seal of the said Circuit Court, this fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] THOS. SPICER, Cl'k Circ't C't.

Filed 18th December, 1860.